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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/520,051

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EXAMINER

SPAHN, GAY

ART UNIT

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3635

MAIL DATE

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12/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/520,051	Applicant(s) BERC, JOACHIM	
	Examiner Gay Ann SPAHN	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4-10 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,6,7,9,10 and 21-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5,8 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06 August 2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Newly submitted claims 21-23 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 5, 8, and 18-20, drawn to a supporting device and a furniture/leisure item including supporting device, classified in class 482, subclass 142.
- II. Claims 21-23, drawn to a method of stretching the chest muscles, classified in class 601, subclass 23.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the claimed product (i.e. supporting device and furniture/leisure item including supporting device) can be used in a materially different process of using the product such as a female cushion support for supporting the breasts of a woman in a manner similar to Fig. 3 of U.S. Patent No. 6,185,768 B1.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-23 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 06 August 2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

However, the examiner notes that item AP listed in the "Non Patent Documents" section of the IDS has been lined through as not being considered because Applicant has failed to identify the "Translation of Japanese Office Action dated June 3, 2008 (9 pages)" as being from a counterpart foreign application.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to

reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 20, lines 4-5, the recitation of “said width dimension of each said area being greater than said length dimension of said area” constitutes new matter as not being supported by the original disclosure. There is no textual disclosure in the specification that provides support for the quoted claim recitation and since patent drawing are not to scale, Applicant cannot rely on the drawing figures to provide support for the quoted claim recitation. Furthermore, it is not clear from elected Fig. 1 that the width dimension of the recesses (3) are greater than the length dimension as the two dimensions appear to be the same.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20, lines 1-5, the recitation of “wherein each said area has a length dimension extending longitudinally between said head support section and said second support surface, said width dimension of each said area being greater than said length dimension of said area” is vague, indefinite, and confusing as lacking antecedent basis because Applicant defines the introduces the length dimension of the areas and defines

Art Unit: 3635

how the length dimension is measured, but does not introduce that the areas have a width dimension or how the width dimension is measured, and then begins discussing the width dimension of the areas without having first introduced the width dimension on the areas.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18, 19, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by DANYLIEKO (U.S. Patent No. 5,649,886).

As to claim 18, DANYLIEKO discloses a longitudinally elongate supporting device for a person's back and head area, said device comprising:

a head support section (32); and

a back support section (12), said back support section (12) defining a first support surface (between 28, 28) disposed at the level of shoulder blade areas of a person, and a second support surface (left portion of 12 adjacent first support portion between lateral indentations 28, 28 in Fig. 3),

said first support surface (between 28, 28) being disposed between said head support section (32) and said second support surface (left portion of 12 adjacent first support portion between lateral indentations 28, 28 in Fig. 3),

Art Unit: 3635

said first and second support surfaces (between 28, 28 and left portion of 12 adjacent first support portion between lateral indentations 28, 28 in Fig. 3) each having a width dimension defined transversely relative to a longitudinal central axis of said supporting device and said second support surface (left portion of 12 adjacent first support portion between lateral indentations 28, 28 in Fig. 3) having a longitudinal dimension defined parallel to the central longitudinal axis of said supporting device,

said first support surface (between 28, 28) defining a pair of areas (area outside of lateral indentations 28, 28) which open sidewardly outwardly on opposite sides of said back support section (12) “for receiving the respective shoulder blade areas of the person” (the structure of DANYLIEKO is capable of performing the recited intended use within quotation marks),

each said area (area outside of lateral indentations 28, 28) having an innermost edge defined by an outer longitudinal edge of said first support surface (between 28, 28) and located adjacent the central longitudinal axis,

said width dimension of said first support surface (between 28, 28) being defined transversely between said innermost edges of said areas (area outside of lateral indentations 28, 28) and being significantly less than said width dimension of said second support surface (left portion of 12 adjacent first support portion between lateral indentations 28, 28 in Fig. 3),

said width dimension of said first support surface (between 28, 28) being sufficiently narrow so that said first support surface (between 28, 28) supports only a spinal column region of the person and “to permit the respective shoulder blade areas of

Art Unit: 3635

the person to move downwardly below said first support surface without meeting any resistance from said supporting device” (the structure of DANYLIEKO is capable of performing the recited intended use within quotation marks),

said longitudinal dimension and said width dimension of said second support surface (left portion of 12 adjacent first support portion between lateral indentations 28, 28 in Fig. 3) being of a dimension sufficient for fully supporting the person's thoracic region,

said areas (area outside of lateral indentations 28, 28) each having a maximum width dimension extending transversely between the respective said innermost edge to an outer extent in longitudinal alignment with an outer longitudinal edge of said second support surface (left portion of 12 adjacent first support portion between lateral indentations 28, 28 in Fig. 3),

said width dimension of each said area (area outside of lateral indentations 28, 28) being greater than said width dimension of said first support surface (between 28, 28).

As to claim 19, DANYLIEKO discloses the device of claim 18 as discussed above, and DANYLIEKO also discloses that said head support section (32) has a width dimension defined transversely relative to the longitudinal central axis of said supporting device, said width dimension of said head support section (32) being greater than said width dimension of said first support surface (between 28, 28).

As to claim 5, DANYLIEKO discloses the device of claim 18 as discussed above, and DANYLIEKO also discloses that said back support section (12) and said head support section (32) are integrated in a rigid support unit.

As to claim 8, DANYLIEKO discloses the device of claim 18 as discussed above, and DANYLIEKO also discloses that the device is provided to a home or workplace furniture item or leisure item.

Claims 18, 19, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by LEE (U.S. Patent No. 4,861,024).

As to claim 18, LEE discloses a longitudinally elongate supporting device for a person's back and head area, said device comprising:

a head support section (portion of 23 in Fig. 2 to left of portion that cut-outs 31, 33 are in); and

a back support section (portion of 23 in Fig. 2 between cut-outs 31, 33 and to the right of portion that cut-outs 31, 33 are in), said back support section (portion of 23 in Fig. 2 between cut-outs 31, 33 and to the right of portion that cut-outs 31, 33 are in) defining a first support surface (surface of portion of 23 that cut-outs 31, 33 are in) disposed at the level of shoulder blade areas of a person, and a second support surface (surface of portion of 23 to right of portion that cut-outs 31, 33 are in),

said first support surface (surface of portion of 23 that cut-outs 31, 33 are in) being disposed between said head support section and said second support surface,

Art Unit: 3635

said first and second support surfaces (surface of portion of 23 that cut-outs 31, 33 are in, and surface of portion of 23 to right of portion that cut-outs 31, 33 are in) each having a width dimension defined transversely relative to a longitudinal central axis of said supporting device and said second support surface (surface of portion of 23 to right of portion that cut-outs 31, 33 are in) having a longitudinal dimension defined parallel to the central longitudinal axis of said supporting device,

said first support surface (surface of portion of 23 that cut-outs 31, 33 are in) defining a pair of areas (areas adjacent cut-outs 31, 33) which open sidewardly outwardly on opposite sides of said back support section (portion of 23 in Fig. 2 between cut-outs 31, 33 and to the right of portion that cut-outs 31, 33 are in) “for receiving the respective shoulder blade areas of the person” (the structure of LEE is capable of performing the recited intended use within quotation marks),

each said area (areas adjacent cut-outs 31, 33) having an innermost edge defined by an outer longitudinal edge of said first support surface (surface of portion of 23 that cut-outs 31, 33 are in) and located adjacent the central longitudinal axis,

said width dimension of said first support surface (surface of portion of 23 that cut-outs 31, 33 are in) being defined transversely between said innermost edges of said areas (areas adjacent cut-outs 31, 33) and being significantly less than said width dimension of said second support surface (surface of portion of 23 to right of portion that cut-outs 31, 33 are in),

said width dimension of said first support surface (surface of portion of 23 that cut-outs 31, 33 are in) being sufficiently narrow so that said first support surface

Art Unit: 3635

(surface of portion of 23 that cut-outs 31, 33 are in) supports only a spinal column region of the person and “to permit the respective shoulder blade areas of the person to move downwardly below said first support surface without meeting any resistance from said supporting device” (the structure of LEE is capable of performing the recited intended use within quotation marks),

said longitudinal dimension and said width dimension of said second support surface (surface of portion of 23 to right of portion that cut-outs 31, 33 are in), being of a dimension sufficient for fully supporting the person's thoracic region,

said areas (areas adjacent cut-outs 31, 33) each having a maximum width dimension extending transversely between the respective said innermost edge to an outer extent in longitudinal alignment with an outer longitudinal edge of said second support surface (surface of portion of 23 to right of portion that cut-outs 31, 33 are in),

said width dimension of each said area (areas adjacent cut-outs 31, 33) being greater than said width dimension of said first support surface (surface of portion of 23 that cut-outs 31, 33 are in).

As to claim 19, LEE discloses the device of claim 18 as discussed above, and LEE also discloses that said head support section has a width dimension defined transversely relative to the longitudinal central axis of said supporting device, said width dimension of said head support section being greater than said width dimension of said first support surface.

Art Unit: 3635

As to claim 5, LEE discloses the device of claim 18 as discussed above, and LEE also discloses that said back support section and said head support section are integrated in a rigid support unit.

As to claim 8, LEE discloses the device of claim 18 as discussed above, and LEE also discloses that the device is provided to a home or workplace furniture item or leisure item.

Claims 18, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by FALBO, SR. ET AL. (U.S. Patent Application Publication No. 2002/0056160).

As to claim 18, FALBO, SR. ET AL. disclose a longitudinally elongate supporting device for a person's back and head area, said device comprising:

a head support section (28) ; and

a back support section (52, 58), said back support section (52, 58) defining a first support surface (52) disposed at the level of shoulder blade areas of a person, and a second support surface (58),

said first support surface (52) being disposed between said head support section (28) and said second support surface (58),

said first and second support surfaces (52, 58) each having a width dimension defined transversely relative to a longitudinal central axis of said supporting device and said second support surface (58) having a longitudinal dimension defined parallel to the central longitudinal axis of said supporting device,

said first support surface (52) defining a pair of areas (60, and what 20 is in in Fig. 2) which open sidewardly outwardly on opposite sides of said back support section (52, 58) “for receiving the respective shoulder blade areas of the person” (the structure of FALBO, SR. ET AL. is capable of performing the recited intended use within quotation marks),

each said area (60, and what 20 is in in Fig. 2) having an innermost edge defined by an outer longitudinal edge of said first support surface (525) and located adjacent the central longitudinal axis,

said width dimension of said first support surface (52) being defined transversely between said innermost edges of said areas (60, and what 20 is in in Fig. 2) and being significantly less than said width dimension of said second support surface (58),

said width dimension of said first support surface (52) being sufficiently narrow so that said first support surface (52) supports only a spinal column region of the person and “to permit the respective shoulder blade areas of the person to move downwardly below said first support surface without meeting any resistance from said supporting device” (the structure of FALBO, SR. ET AL. is capable of performing the recited intended use within quotation marks),

said longitudinal dimension and said width dimension of said second support surface (58) being of a dimension sufficient for fully supporting the person's thoracic region,

said areas (60, and what 20 is in in Fig. 2) each having a maximum width dimension extending transversely between the respective said innermost edge to an

Art Unit: 3635

outer extent in longitudinal alignment with an outer longitudinal edge of said second support surface (58),

said width dimension of each said area (60, and what 20 is in in Fig. 2) being greater than said width dimension of said first support surface (52).

As to claim 5, FALBO, SR. ET AL. disclose the device of claim 18 as discussed above, and FALBO, SR. ET AL. also disclose that said back support section (52, 58) and said head support section (28) are integrated in a rigid support unit.

As to claim 8, FALBO, SR. ET AL. disclose the device of claim 18 as discussed above, and FALBO, SR. ET AL. also disclose that the device is provided to a home or workplace furniture item or leisure item.

Claims 18-20, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by NELSON ET AL. (U.S. Patent No. 5,479,667).

As to claim 18, NELSON ET AL. disclose a longitudinally elongate supporting device for a person's back and head area, said device comprising:

a head support section (36); and

a back support section (38, 39), said back support section (38, 39) defining a first support surface (surface of 38) disposed at the level of shoulder blade areas of a person, and a second support surface (surface of 39),

said first support surface (surface of 38) being disposed between said head support section (36) and said second support surface (surface of 39),

Art Unit: 3635

said first and second support surfaces (surface of 38, surface of 39) each having a width dimension defined transversely relative to a longitudinal central axis of said supporting device and said second support surface (surface of 39) having a longitudinal dimension defined parallel to the central longitudinal axis of said supporting device,

said first support surface (surface of 38) defining a pair of areas (70, 70) which open sidewardly outwardly on opposite sides of said back support section (38, 39) “for receiving the respective shoulder blade areas of the person” (the structure of NELSON ET AL. is capable of performing the recited intended use within quotation marks),

each said area (70, 70) having an innermost edge defined by an outer longitudinal edge of said first support surface (surface of 38) and located adjacent the central longitudinal axis,

said width dimension of said first support surface (surface of 38) being defined transversely between said innermost edges of said areas (70, 70) and being significantly less than said width dimension of said second support surface (surface of 39),

said width dimension of said first support surface (surface of 38) being sufficiently narrow so that said first support surface (surface of 38) supports only a spinal column region of the person and “to permit the respective shoulder blade areas of the person to move downwardly below said first support surface without meeting any resistance from said supporting device” (the structure of NELSON ET AL. is capable of performing the recited intended use within quotation marks),

said longitudinal dimension and said width dimension of said second support surface (surface of 39) being of a dimension sufficient for fully supporting the person's thoracic region,

said areas (70, 70) each having a maximum width dimension extending transversely between the respective said innermost edge to an outer extent in longitudinal alignment with an outer longitudinal edge of said second support surface (surface of 39),

said width dimension of each said area (70, 70) being greater than said width dimension of said first support surface (surface of 38).

As to claim 19, NELSON ET AL. disclose the device of claim 18 as discussed above, and NELSON ET AL. also disclose that said head support section (36) has a width dimension defined transversely relative to the longitudinal central axis of said supporting device, said width dimension of said head support section (36) being greater than said width dimension of said first support surface (surface of 38).

As to claim 20, NELSON ET AL. disclose the device of claim 18 as discussed above, and NELSON ET AL. also disclose that each said area has a length dimension extending longitudinally between said head support section (36) and said second support surface (surface of 39), said width dimension of each said area (70, 70) being greater than said length dimension of said area (70, 70).

As to claim 5, NELSON ET AL. disclose the device of claim 18 as discussed above, and NELSON ET AL. also disclose that said back support section (38, 39) and said head support section (36) are integrated in a rigid support unit.

As to claim 8, NELSON ET AL. disclose the device of claim 18 as discussed above, and NELSON ET AL. also disclose that the device is provided to a home or workplace furniture item or leisure item.

Claims 18, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by O'CONNOR (U.S. Patent Application Publication No. 2003/0220176).

As to claim 18, O'CONNOR discloses a longitudinally elongate supporting device for a person's back and head area, said device comprising:

a head support section (upper 26); and

a back support section (lower 26 and 28), said back support section (lower 26 and 28) defining a first support surface (upper surface of lower 26) disposed at the level of shoulder blade areas of a person, and a second support surface (upper surface of 28),

said first support surface (upper surface of lower 26) being disposed between said head support section (upper 26) and said second support surface (upper surface of 28),

said first and second support surfaces (upper surface of lower 26, and upper surface of 28) each having a width dimension defined transversely relative to a longitudinal central axis of said supporting device (10) and said second support surface (upper surface of 28) having a longitudinal dimension defined parallel to the central longitudinal axis of said supporting device (10),

Art Unit: 3635

said first support surface (upper surface of lower 26) defining a pair of areas (areas opposite lower 26 and 28) which open sidewardly outwardly on opposite sides of said back support section (lower 26 and 28) “for receiving the respective shoulder blade areas of the person” (the structure of O’CONNOR is capable of performing the recited intended use within quotation marks),

each said area (areas opposite lower 26 and 28) having an innermost edge defined by an outer longitudinal edge of said first support surface (upper surface of lower 26) and located adjacent the central longitudinal axis,

said width dimension of said first support surface (upper surface of lower 26) being defined transversely between said innermost edges of said areas (areas opposite lower 26 and 28) and being significantly less than said width dimension of said second support surface (upper surface of 28),

said width dimension of said first support surface (upper surface of lower 26) being sufficiently narrow so that said first support surface (upper surface of lower 26) supports only a spinal column region of the person and “to permit the respective shoulder blade areas of the person to move downwardly below said first support surface without meeting any resistance from said supporting device” (the structure of O’CONNOR is capable of performing the recited intended use within quotation marks),

said longitudinal dimension and said width dimension of said second support surface (upper surface of 28) being of a dimension sufficient “for fully supporting the person's thoracic region” (the structure of O’CONNOR is capable of performing the recited intended use within quotation marks),

said areas (areas opposite lower 26 and 28) each having a maximum width dimension extending transversely between the respective said innermost edge to an outer extent in longitudinal alignment with an outer longitudinal edge of said second support surface (upper surface of 28),

said width dimension of each said area (areas opposite lower 26 and 28) being greater than said width dimension of said first support surface (upper surface of lower 26).

As to claim 5, O'CONNOR discloses the device of claim 18 as discussed above, and O'CONNOR also discloses that said back support section (lower portion of 26 and 28) and said head support section (upper portion of 26) are integrated in a rigid support unit.

As to claim 8, O'CONNOR discloses the device of claim 18 as discussed above, and O'CONNOR also discloses that the device is provided to a home or workplace furniture item or leisure item.

Claims 18-20, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by KHALKHALI ET AL. (U.S. Patent No. 5,803,913).

As to claim 18, KHALKHALI ET AL. disclose a longitudinally elongate supporting device for a person's back and head area, said device comprising:

a head support section (portion of 12 to left of intermediate portion 22 in Fig. 1);
and

a back support section (22, and portion of 12 to right of intermediate portion 22 in Fig. 1), said back support section (22, and portion of 12 to right of intermediate portion 22 in Fig. 1) defining a first support surface (surface of 22) disposed at the level of shoulder blade areas of a person, and a second support surface (surface of portion of 12 to right of intermediate portion 22 in Fig. 1),

said first support surface (surface of 22) being disposed between said head support section (portion of 12 to left of intermediate portion 22 in Fig. 1) and said second support surface (surface of portion of 12 to right of intermediate portion 22 in Fig. 1),

said first and second support surfaces (surface of 22, surface of portion of 12 to right of intermediate portion 22 in Fig. 1) each having a width dimension defined transversely relative to a longitudinal central axis of said supporting device and said second support surface (surface of portion of 12 to right of intermediate portion 22 in Fig. 1) having a longitudinal dimension defined parallel to the central longitudinal axis of said supporting device,

said first support surface (surface of 22) defining a pair of areas (18, 18) which open sidewardly outwardly on opposite sides of said back support section (22, and portion of 12 to right of intermediate portion 22 in Fig. 1) “for receiving the respective shoulder blade areas of the person” (the structure of KHALKHALI ET AL. is capable of performing the recited intended use within quotation marks),

each said area (18, 18) having an innermost edge defined by an outer longitudinal edge of said first support surface (surface of 22) and located adjacent the central longitudinal axis,

said width dimension of said first support surface (surface of 22) being defined transversely between said innermost edges of said areas (18, 18) and being significantly less than said width dimension of said second support surface (surface of portion of 12 to right of intermediate portion 22 in Fig. 1),

said width dimension of said first support surface (surface of 22) being sufficiently narrow so that said first support surface (surface of 22) supports only a spinal column region of the person and “to permit the respective shoulder blade areas of the person to move downwardly below said first support surface without meeting any resistance from said supporting device” (the structure of KHALKHALI ET AL. is capable of performing the recited intended use within quotation marks),

said longitudinal dimension and said width dimension of said second support surface (surface of portion of 12 to right of intermediate portion 22 in Fig. 1) being of a dimension sufficient for fully supporting the person's thoracic region,

said areas (18, 18) each having a maximum width dimension extending transversely between the respective said innermost edge to an outer extent in longitudinal alignment with an outer longitudinal edge of said second support surface (surface of portion of 12 to right of intermediate portion 22 in Fig. 1),

said width dimension of each said area (18, 18) being greater than said width dimension of said first support surface (surface of 22).

As to claim 19, KHALKHALI ET AL. disclose the device of claim 18 as discussed above, and KHALKHALI ET AL. also disclose that said head support section (portion of 12 to left of intermediate section 22 in Fig. 1) has a width dimension defined transversely relative to the longitudinal central axis of said supporting device, said width dimension of said head support section (portion of 12 to left of intermediate section 22 in Fig. 1) being greater than said width dimension of said first support surface (surface of 22).

As to claim 20, KHALKHALI ET AL. disclose the device of claim 18 as discussed above, and KHALKHALI ET AL. also disclose that each said area has a length dimension extending longitudinally between said head support section (36) and said second support surface (surface of portion of 12 to right of intermediate portion 22 in Fig. 1), said width dimension of each said area (18, 18) being greater than said length dimension of said area (18, 18).

As to claim 5, KHALKHALI ET AL. disclose the device of claim 18 as discussed above, and KHALKHALI ET AL. also disclose that said back support section (22, and portion of 12 to right of intermediate portion 22 in Fig. 1) and said head support section (portion of 12 to left of intermediate section 22 in Fig. 1) are integrated in a rigid support unit.

As to claim 8, KHALKHALI ET AL. disclose the device of claim 18 as discussed above, and KHALKHALI ET AL. also disclose that the device is provided to a home or workplace furniture item or leisure item.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over DANYLIEKO (U.S. Patent No. 5,649,886) in view of either MORIYAMA (U.S. Patent No. 3,606,461) or NELSON ET AL. (U.S. Patent No. 5,479,667).

As to claim 20, DANYLIEKO discloses the device of claim 18 as discussed above, and DANYLIEKO also discloses that each said area has a length dimension extending longitudinally between said head support section and said second support surface.

DANYLIEKO fails to explicitly disclose that said width dimension of each said area being greater than said length dimension of said area.

Either MORIYAMA or NELSON ET AL. discloses that said width dimension of each said area (30 of Fig. 5 of MORIYAMA or 70 of NELSON ET AL.) is greater than said length dimension of said area (see Fig. 5 of MORIYAMA and Figs. 1 and 4 of NELSON ET AL.).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of DANYLIEKO by making the width dimension of each of the areas be greater than the length dimension as taught by MORIYAMA in order that the areas be of the optimum width and length for supporting

Art Unit: 3635

the user's spinal cord while letting the user's shoulder blades extend downwardly without interference.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'CONNOR (U.S. Patent Application Publication No. 2003/0220176) in view of either DANYLIEKO (U.S. Patent No. 5,649,886) or LEE (U.S. Patent No. 4,861,024).

As to claim 19, O'CONNOR discloses the device of claim 18 as discussed above, and O'CONNOR also discloses that said head support section (upper portion of 26) has a width dimension defined transversely relative to the longitudinal central axis of said supporting device

O'CONNOR fails to explicitly disclose that said width dimension of said head support section being greater than said width dimension of said first support surface.

Either one of DANYLIEKO or LEE discloses that said width dimension of said head support section (32 of DANYLIEKO or portion of 25 above 31 and 33 in LEE) is greater than said width dimension of said first support surface (area between 28, 28 of DANYLIEKO or area between 31 and 33 of LEE).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of O'CONNOR by making the width dimension of the head support section be greater than the width dimension of the first support surface as taught by either DANYLIEKO or LEE in order to provide better support for a person's head which is wider than a person's spinal cord region.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'CONNOR (U.S. Patent Application Publication No. 2003/0220176) in view of either MORIYAMA (U.S. Patent No. 3,606,461) or NELSON ET AL. (U.S. Patent No. 5,479,667).

As to claim 20, O'CONNOR discloses the device of claim 18 as discussed above, and O'CONNOR also discloses that each said area has a length dimension extending longitudinally between said head support section and said second support surface.

O'CONNOR fails to explicitly disclose that said width dimension of each said area being greater than said length dimension of said area.

Either MORIYAMA or NELSON ET AL. discloses that said width dimension of each said area (30 of Fig. 5 of MORIYAMA or 70 of NELSON ET AL.) is greater than said length dimension of said area (see Fig. 5 of MORIYAMA and Figs. 1 and 4 of NELSON ET AL.).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of O'CONNOR by making the width dimension of each of the areas be greater than the length dimension as taught by MORIYAMA in order that the areas be of the optimum width and length for supporting the user's spinal cord while letting the user's shoulder blades extend downwardly without interference.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over LEE (U.S. Patent No. 4,861,024) in view of either MORIYAMA (U.S. Patent No. 3,606,461) or NELSON ET AL. (U.S. Patent No. 5,479,667).

As to claim 20, LEE discloses the device of claim 18 as discussed above, and LEE also discloses that each said area has a length dimension extending longitudinally between said head support section and said second support surface.

LEE fails to explicitly disclose that said width dimension of each said area being greater than said length dimension of said area.

Either MORIYAMA or NELSON ET AL. discloses that said width dimension of each said area (30 of Fig. 5 of MORIYAMA or 70 of NELSON ET AL.) is greater than said length dimension of said area (see Fig. 5 of MORIYAMA and Figs. 1 and 4 of NELSON ET AL.).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of LEE by making the width dimension of each of the areas be greater than the length dimension as taught by MORIYAMA in order that the areas be of the optimum width and length for supporting the user's spinal cord while letting the user's shoulder blades extend downwardly without interference.

Response to Arguments

Applicant's arguments with respect to claims 18-20, 5, and 8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Friday, 10:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on (571)-272-6777. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gay Ann Spahn/
Gay Ann Spahn, Primary Examiner
December 7, 2008